

ESTTA Tracking number: **ESTTA309554**

Filing date: **10/02/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92048667
Party	Plaintiff Jules Jurgensen/Rhapsody, Inc.
Correspondence Address	STUART E. BECK THE BECK LAW FIRM 1500 WALNUT STREET, SUITE 700 PHILADELPHIA, PA 19102-3504 UNITED STATES BeckPatent@aol.com
Submission	Other Motions/Papers
Filer's Name	Stuart E. Beck
Filer's e-mail	BeckPatent@aol.com
Signature	/Stuart E. Beck/
Date	10/02/2009
Attachments	09-10-02 JJ's Response to Petitioner's SurReply.pdf ( 7 pages )(4211246 bytes )

Neither party has objected to or commented on electronic service by the other party.

Thus, by their conduct both Petitioner and Respondent have mutually agreed to the "electronic transmission" of documents as provided for in Rule 2.119(b)(6).

Respondent had actual physical possession of Petitioner's Motion on Monday August 17, 2009. In view of the practice of the parties, the time period for Respondents response to Petitioners Motion began when it actually received the Motion, namely, August 17, 2009.

The period for response expired on September 1, 2009 (fifteen days after service), not September 8, 2009 (an additional five days plus holidays) as claimed by Respondent.

Respondent's reliance on the five day grace period in Rule 2.119(c) is misplaced.

Rule 2.119(c) speaks to the five day grace period only when a paper

".. is served by "first-class mail, 'Express Mail,' or overnight courier."

Thus, the Rule does not apply to electronic (instantaneous service).

Electronic service is analogous to hand delivery. This is because the risk of delay or uncertainty as to the fact of actual receipt of the paper by the recipient is non-existent. Thus, delay and uncertainty of timely delivery is always a possibility with service in the ways cited in the rule.

With electronic delivery, delivery is instant, or not at all.

Clearly, respondent does not claim that it never received the electronically served copy of Petitioner's motion.

Accordingly, its Motion is not well taken and should be denied

Respondent has failed to justify its conduct  
leading up to the deposition of Mr. Clayman

Respondent has failed to justify its conduct or deny the following facts and events that occurred prior to the deposition of Mr. Clayman:

1. On March 4, 2009, before the notice of Mr. Clayman's testimony deposition was drafted, Petitioner's and Respondent's counsel had a telephone conference concerning where and when Mr. Clayman's testimony would be taken, and how Respondent would be represented.
2. The notes from Petitioner's counsel's time record for March 4, 2009 as set out below:

"Prepare Notice of Testimony deposition of Morton Clayman, conference with the attorney for Peter Baumberger with respect to when and when the deposition would be taken and how Peter Baumberger would be represented."
3. Respondent failed to object to Mr. Clayman's deposition during that telephone conference.
4. Respondent cooperated with Petitioner's counsel on the scheduling of Mr. Clayman's deposition.
5. Respondent's failed to file a Rule 2. 121(e) motion at any time during the two weeks between the March 4, 2009 conference and the date of Mr. Clayman's deposition.
6. The consequence of Respondent's cooperation with Petitioner in the scheduling of Mr. Clayman's deposition, and its failure to file a motion under Rule 2.121(e):

(1) encouraged Petitioner to incur the expense of a court reporter and

(2) interfered with Mr. Clayman's running of his business,

while it sat quietly waiting to pounce with its motion to strike.

7. That at least the day before Mr. Clayman's deposition there was at least one more telephone conference between Respondent's and Petitioner's counsel during which Respondent's counsel disclosed that it would attend the deposition by telephone.

Accordingly, Petitioner's Request for Reconsideration should be granted, and the Order Striking Mr. Clayman's deposition be reversed and withdrawn.

Jules Jurgensen/Rhapsody, Inc.

/Stuart E. Beck/  
Stuart B. Beck, Esq.

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The undersigned Certifies that on October 2, 2009 Petitioner's Response to Respondent's Surreply In Support of Motion for Judgement was sent by email to Andrea Anderson, the attorney for the Respondent at Aanderson@hollandhart.com, and by first class mail, postage prepaid at:

Holland & Hart  
One Boulder  
1800 Broadway, Suite 300  
Boulder, CO 80302

/Stuart E. Beck/  
Stuart B. Beck, Esq.

Subj: **Jules Jurgensen/Rhapsody, Inc. v. Peter Baumberger, TTAB Cancellation No. 92048667**  
Date: 4/7/2009 5:37:57 P.M. Eastern Daylight Time  
From: [SThoele@hollandhart.com](mailto:SThoele@hollandhart.com)  
To: [BeckPatent@aol.com](mailto:BeckPatent@aol.com)  
CC: [ACHaselfeld@hollandhart.com](mailto:ACHaselfeld@hollandhart.com), [aanderson@hollandhart.com](mailto:aanderson@hollandhart.com), [CShearer@hollandhart.com](mailto:CShearer@hollandhart.com)

Dear Mr. Beck:

Attached please find the following which were filed today in the above-referenced matter :

1. Motion to Strike Testimony of Morton Clayman;
2. Declaration of Annie Chu Haselfeld in Support of Motion to Strike Testimony of Morton Clayman; and
3. Exhibits A through E to the Declaration.

A copy of the attachments will also follow by U.S. Mail.

Sincerely,

Sandy Thoele  
Assistant to Annie Chu Haselfeld  
Holland & Hart LLP  
One Boulder Plaza  
1800 Broadway, Suite 300  
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Subj: **Jules Jurgensen/Rhapsody, Inc. v. Peter Baumberger -- Cancellation No. 92048667**  
Date: 7/20/2009 12:56:17 P.M. Eastern Daylight Time  
From: [aanderson@hollandhart.com](mailto:aanderson@hollandhart.com)  
To: [beckpatent@aol.com](mailto:beckpatent@aol.com)  
CC: [aanderson@hollandhart.com](mailto:aanderson@hollandhart.com), [ACHaselfeld@hollandhart.com](mailto:ACHaselfeld@hollandhart.com)

See attached Motion for Judgment Under Trademark Rule 2.132(a) which we filed with the Trademark Trial and Appeal Board on July 20, 2009.

Thank you.

**Heidi L. Macy**  
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**1800 Broadway, Suite 300**  
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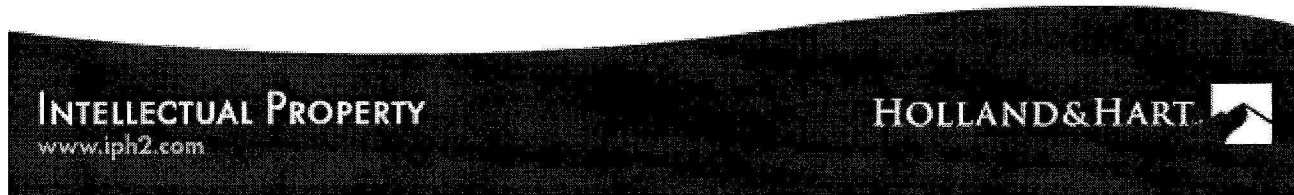


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**Subj:** Cancellation No. 92048667  
**Date:** 9/8/2009 1:37:01 P.M. Eastern Daylight Time  
**From:** [CShearer@hollandhart.com](mailto:CShearer@hollandhart.com)  
**To:** [beckpatent@aol.com](mailto:beckpatent@aol.com)  
**CC:** [aanderson@hollandhart.com](mailto:aanderson@hollandhart.com)



Dear Mr. Beck:

Please see attached Reply in Support of Motion for Judgment and Opposition to Petitioner's Request for Reconsideration and Receipt.

Chris Shearer

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*IP Specialist*  
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Intellectual Property Group at Holland & Hart LLP

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